IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1027 of 2006
Date of Decision. 22.07.2010

United India Insurance Company Limited, SCO No.123-124, Sector 17-B, Chandigarh through its Manager Sh. R.C. Bansal

.....Appellant

Versus

Jhalsu Sahni s/o Band Lal Sahni r/o village Maloya and others

.....Respondents

Present: Mr. V. Ramswaroop, Advocate
for the appellant.

Mr. Rajnesh Narula, Advocate
for respondent No.2.

Mr. Ravinder Arora, Advocate
for respondent No.4.

2. **FAO No.3298 of 2006**

Joginder Kaur wife of Kapur Singh, R/o House No.466, Village Maloya, Union Territory, Chandigarh and another

.....Appellants

Versus

Kamlesh Devi r/o Village Dasouli Tehsil Rajpura, Distt. Patiala (Pb.) LR of Jaspal Singh driver of Truck (since deceased) and others

.....Respondents

Present: Mr. Rajnesh Narula, Advocate
for the appellants.

Mr. Vivek Singal, Advocate
for respondent No.3.

2. **FAO No.3299 of 2006**

Jehlsu Sahni s/o Band Lal Sahni, resident of village Maloya, U.T., Chandigarh

.....Appellant

Versus

Kamlesh Devi LR of Jaspal Singh (since deceased) and others

.....Respondents

Present: Mr. Rajnesh Narula, Advocate
for the appellants.

Mr. Vivek Singal, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

-.-

K. KANNAN J. (ORAL)

1. All these three appeals arise out of the same accident. FAO No.3298 of 2006 is by the claimants, who have preferred an appeal against the dismissal of their petition. The dismissal arose on the account of the fact that they had earlier filed a petition on the very same cause of action in MACT Case No.128 of 2001 under the tittle "Kapoor Singh Vs. Amarjit Singh and others" at Panipat. The claimants were reported to have suppressed the fact of the earlier institution and the dismissal and filed the petition before MACT, Chandigarh. Obviously, there cannot be two independent claims against the very same award. If the earlier petition had been dismissed for want of proof, the appeal should have been filed only against that judgment and a fresh petition in yet another Tribunal could not have been filed or entertained. The dismissal of the case, under these circumstances, was justified.

2. The appeal in FAO No.3298 of 2006 is dismissed. It shall be open, however for the claimants to prefer an appeal against the decision in MACT Case No.128/2001, if they are so advised and if they can show their bona fides in any way that they were labouring

in any mistake or wrong advice in filing a fresh petition in another Court.

3. In two other cases, FAO No.1026 is filed at the instance of the insurance company and with reference to the very same claim, FAO No.3299 is filed by the claimants for enhancement.

4. In FAO No.1026 of 2006, the insurance company filed an application for additional evidence on the ground that although they had secured a report that the driver did not have a valid driving licence and even the permit was not valid, those documents were not filed in Court by the negligence of the counsel and permission is sought by the insurer to produce the documents and examine witnesses. A negligence attributed to the counsel shall not be a ground for adducing additional evidence in appeal and to seek for exclusion of liability. I reject the plea sought through the application.

5. The learned counsel appearing for the insurance company contends on merits of the claim that the liability must have been attributed only to the truck driver and in fact even in a case filed by some other persons in relation to the very same accident before the MACT, Panipat, it was contended that only the truck driver was responsible for the accident. A decision or a reference to negligence by yet another person in another case cannot constitute an admission against the claimants. The case will have to be decided on its own merit and in this case, the Tribunal has found that the tanker had been parked in the middle of the road at 3 AM and the truck dashed against the tanker, which resulted in an

immediate explosion and death and injury to the passengers in the truck. Section 122 bars leaving the vehicle in dangerous position. It could have been least expected that a vehicle is parked in the middle of the road and a driver is apt to believe that the vehicle in front drove on, and when it did not, collision must have been inevitable. If there was a case for contributory negligence, there must have been suggestion or evidence to the said effect. There is no such evidence to hold both vehicle drivers responsible for the accident. I do not want, therefore, to disturb the finding already rendered with reference to the negligence of the driver of the tanker.

6. Even this discussion becomes academic if we consider the fact that the insurance company can not have a grievance against the finding of negligence if there had been no permission secured under Section 170 of the Motor Vehicles act. Neither in the grounds of appeal nor in the application for stay is any reference made to any such permission as having been granted by the Tribunal.

7. The award of the Tribunal, under these circumstances, shall stand confirmed. The appeal by the insurance company in FAO No.1027 of 2006 shall stand dismissed.

8. As regards the appeal for enhancement in FAO No.3299 of 2006, the contention of the claimants was that he was taking treatment at the hospital at Delhi from 15.02.1999 to 17.02.1999. He had 30% burns and he was under medication and dressing of wounds upto 07.03.1999. Before the Tribunal, a certificate was produced to the effect that he had 45% disability in the upper limits.

The Tribunal had awarded Rs.75,000/- compensation towards the pain and suffering for his hospitalization and the subsequent treatment, provided the entire claim of Rs.36,040/- that was evidenced through medical bills and yet another Rs.5,000/- had been awarded to him for special diet. In my view, the award of compensation at Rs.75,000/- for pain and suffering for two days hospitalization is very high. It could have been at best only Rs.25,000/-. For the 45% disability, the Tribunal could have granted Rs.90,000/- compensation but no amount has been provided at all. On a re-working of the compensation, it would mean an additional amount of Rs.40,000/- as payable. The claimants would be entitled to such an enhancement of Rs.40,000/- over the amount, which had already been granted. The 7th respondent shall become liable for making the payment of the enhanced amount with interest @7.5% from the date of the award of the Tribunal till the date of payment.

9. The appeal filed by the claimants shall stand partly allowed to the above extent.

(K. KANNAN)
JUDGE

July 22, 2010
Pankaj*